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8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

9 **FOR THE COUNTY OF MONTEREY**

10 GERARDO CELEDON PEREZ,

11 Plaintiff,

12 vs.

13 SOUTH COUNTY PACKING, INC.; JEFF)
14 RAVA SR.; and DOES 1 to 25, inclusive,)

15 Defendants.)
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CASE NO.: 24CV002371

COMPLAINT FOR DAMAGES FOR:

**1) PRIVATE ATTORNEYS GENERAL
ACT ("PAGA");**

COMES NOW Plaintiff, GERARDO CELEDON PEREZ (hereinafter "Plaintiff"), and alleges as follows:

PARTIES, JURISDICTION, VENUE

1. Jurisdiction and Venue are proper in this Court and this action is properly filed in the County of Monterey in this judicial district because Defendants SOUTH COUNTY PACKING, INC.; JEFF RAVA SR. and DOES 1 to 25, inclusive, (hereinafter collectively known as "Defendant(s)" or "SOUTH COUNTY PACKING"), do business in the County of Monterey and because Defendants' obligations and liabilities arise therein. Moreover, Plaintiff's damages sought herein exceed \$35,000.

2. Plaintiff is a male resident of the State of California.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant SOUTH COUNTY PACKING, INC. is and was a California corporation, doing business in Monterey County, California, and which employed Plaintiff.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant JEFF RAVA SR. is a male resident of the State of California, and the owner, managing agent, and/or director of SOUTH COUNTY PACKING, INC. JEFF RAVA SR. is being included in this lawsuit pursuant to Labor Code Section 558.1 in that he was and is involved in the day-to-day operations of the business, including the wage and hour policies and procedures, and as such, as controlled the hours, wages, and/or working conditions of Plaintiff and other hourly, non-exempt employees. Defendants SOUTH COUNTY PACKING, INC. and JEFF RAVA SR. are collectively referred to herein as "Defendant(s)" (unless otherwise noted) or "SOUTH COUNTY PACKING".

5. Plaintiff is ignorant of the true names and capacities, whether individual, corporate, or

1 associate of those defendants fictitiously sued as DOES 1 to 25, inclusive, and so Plaintiff sues
2 them by these fictitious names. Plaintiff is informed and believes that each of the DOE
3 defendants, numbers 1 to 25, reside in the State of California and are in some manner
4 responsible for the conduct alleged herein. Upon discovering the true names and capacities of
5 these fictitiously named defendants, Plaintiff will amend this complaint to show the true names
6 and capacities of these fictitiously named defendants.

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8 6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of
9 that information and belief, alleges that at all times herein mentioned, each of the remaining
10 codefendants, in doing the things hereinafter alleged, were acting within the course, scope, and
11 under the authority of their agency, employment, or representative capacity, with the consent
12 of his/her codefendants.

13 **GENERAL ALLEGATIONS**

14 7. Plaintiff started working at SOUTH COUNTY PACKING in or around 2006 and is still
15 currently employed. His latest job title is Fertilizing Assistant. Plaintiff was and is classified as
16 an hourly, non-exempt employee.

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18 8. In the case of Huff v. Securitas Sec. Servs. USA, Inc., 23 Cal. App. 5th 745 (2018),
19 Plaintiff, Huff, was employed as a security guard for the Defendant Employer, Securitas
20 Security Services USA, Inc., an onsite security provider. After about a year of employment,
21 Huff resigned. Huff then filed suit against Securitas under PAGA. In his claim, Huff
22 specifically alleged violations to the Labor Code requiring immediate payment of wages upon
23 termination of employment and weekly payment of wages to temporary employees. The trial
24 court determined Huff was not a temporary employee, and therefore, lacked standing to bring
25 the claim. Thus, Securitas was granted a motion for summary judgement. Later, the trial court
26 granted Huff a new trial. Securitas then appealed the grant of a new trial. On appeal, the issue
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1 was whether Huff could bring a PAGA claim and sue for Labor Code violations that did not
2 directly affect him. Securitas unsuccessfully argued that the PAGA statute only allows the
3 PAGA representative to sue for violations that the representative has personally suffered. The
4 PAGA statute states that an “aggrieved employee” is able to file suit on behalf of themselves
5 and others. The statute also states that an “aggrieved employee” is “any person who was
6 employed by the alleged violator and against whom one or more of the alleged violations was
7 committed.” Because at least one of the violations that Huff had alleged had affected him
8 personally, the Court of Appeal denied Securitas’ motion.
9

10 9. In sum, since PAGA allows Plaintiffs to bring suit on behalf of other employees,
11 it allows for suits broader than the specific violations the named employee experienced.
12 Therefore, even if the employee did not personally experience the Labor Code violations, the
13 employer may still be liable to under PAGA. Consequently, it is Plaintiff’s position that
14 Plaintiff can equivocally bring the following labor code violations on behalf of all other
15 employees, including ALL hourly, non-exempt employees, irrespective of job title or job duties
16 who worked for SOUTH COUNTY PACKING at any of their locations in California during
17 the relevant PAGA period.
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19 10. It is Plaintiff’s position that SOUTH COUNTY PACKING has violated the following
20 Labor Code Sections against Plaintiff and other similarly situated aggrieved employees, who
21 include all non-exempt, hourly employees who worked for SOUTH COUNTY PACKING at
22 their various locations in the State of California during the relevant PAGA period.
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24 11. SOUTH COUNTY PACKING violated Labor Code § 1194, 1194.2, 1197, and 1197.1
25 because it failed to pay Plaintiff and other similarly situated aggrieved employees for all hours
26 worked, including the statutory minimum wage for all hours worked and for “off the clock”
27 work. This is so because SOUTH COUNTY PACKING had a company policy wherein they
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1 would disproportionately round down the number of hours worked, resulting in "time shaving"
2 and further resulting in aggrieved employees not being paid for all hours worked. Furthermore,
3 and to the extent that Plaintiff and others worked through their meal periods while "off the
4 clock", they were not compensated for all hours worked, which would be akin to a minimum
5 wage violation. Moreover, SOUTH COUNTY PACKING failed to provide its employees with
6 proper and accurate reporting time pay.

7
8 12. Due to the above "off the clock" violations, SOUTH COUNTY PACKING also
9 violated Labor Code §510 because it failed to pay Plaintiff and other aggrieved employees
10 overtime compensation, even though they worked more than 8 hours per day, 12 hours per day,
11 and/or 40 hours per week throughout their employment. Plaintiff's and other aggrieved
12 employees' actual work hours entitled them to overtime compensation, however, SOUTH
13 COUNTY PACKING did not compensate its hourly, non-exempt employees with overtime or
14 the correct amount of overtime due to the "off the clock" work and time shaving as described
15 above. Furthermore, SOUTH COUNTY PACKING failed to include bonuses/incentive
16 payments in calculating employees' regular rate of pay for use in deciphering the correct
17 overtime rate of pay as Plaintiff generally received a \$1000 bonus every year. Additionally, the
18 incentive and bonus payments were also not factored into employees' regular rate for purposes
19 of receiving meal and rest break premiums per the Ferra v. Loews case.

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21 13. SOUTH COUNTY PACKING also violated Labor Code § 226.7 and the appropriate
22 Industrial Welfare Commission Wage Order no. 4/14 because it failed to provide Plaintiff and
23 other similarly situated aggrieved employees with 10-minute rest periods for every four hours
24 of work, or majority portion thereof, throughout their employment. SOUTH COUNTY
25 PACKING did not completely relieve Plaintiff and others of all duty during said rest periods.
26 SOUTH COUNTY PACKING did not pay to Plaintiff and others one additional hour of pay at
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1 Plaintiff's regular rate of compensation for each workday that one or more statutory rest
2 periods was not provided. It was not part of the company policy for employees such as Plaintiff
3 to take at least two timely, UNINTERRUPTED rest breaks per shift, especially due to
4 understaffing and having deadlines to finish a task. There were particular jobs that were urgent
5 and in those instances timely, uninterrupted rest breaks were not implemented as the job took
6 precedence. The concept of uninterrupted rest breaks was not consistently implemented as it
7 was not company policy. As such, the culture as well as the policies and procedures of SOUTH
8 COUNTY PACKING did not lend itself to the employees receiving consistent statutory rest
9 breaks wherein they were relieved of all work duties. The environment at SOUTH COUNTY
10 PACKING was not conducive to receiving multiple statutory rest breaks under California law
11 and timely, statutory rest breaks were not authorized or enforced.
12

13 14. SOUTH COUNTY PACKING violated Labor Code §§ 512 and 226.7 and the
14 appropriate Industrial Welfare Commission Wage Order no. 4/14 because it failed to provide
15 hourly, non-exempt employees, including Plaintiff and others, the requisite 30-minute,
16 uninterrupted meal periods for every five (5) hours of work throughout their employment.
17 SOUTH COUNTY PACKING did not completely relieve Plaintiff and other employees of all
18 duty during said meal periods. SOUTH COUNTY PACKING did not pay to Plaintiff and its
19 hourly, non-exempt employees one additional hour of pay at their regular rate of compensation
20 for each workday that one or more statutory meal periods was not provided. The hourly, non-
21 exempt employees would often not be able to consistently receive timely, uninterrupted meal
22 breaks. The meal breaks would be late and after the 5th hour worked or they would be
23 interrupted due to work obligations. The lack of consistent, uninterrupted, timely meal breaks
24 was due to the workload and due to having consistent job duties without any relief and without
25 anyone to relieve Plaintiff and others of their job duties. Like the rest breaks, receiving a thirty-
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1 minute uninterrupted and timely meal break was not part of the company culture and was not
2 enforced by SOUTH COUNTY PACKING. Consequently, it was the normal practice and
3 custom of SOUTH COUNTY PACKING not to authorize, permit, and enforce timely statutory
4 meal periods. Moreover, it is Plaintiff's contention that SOUTH COUNTY PACKING did not
5 keep accurately track of Plaintiff's meal and rest periods and the timing of the meal periods. In
6 fact, company policy called for employees to write down break times on a "notepad" instead of
7 digitally clocking in and out for them, which opened the door for the company to manipulate
8 the entries or advise employees to put generally when they were SUPPOSED to take the meal
9 and rest breaks as opposed to when they actually took them (if they took them). If SOUTH
10 COUNTY PACKING had Plaintiff sign a meal period waiver, it would not be valid and
11 enforceable since Plaintiff and others generally worked more than a 6-hour shift. If SOUTH
12 COUNTY PACKING had Plaintiff sign an on-duty meal period agreement wherein Plaintiff
13 agreed to work through the meal periods, it would be invalid and unenforceable because the
14 nature of Plaintiff's job does not and did not prevent him from taking a meal period and the
15 company could have hired "breakers" to relieve Plaintiff of his job duties so that he can
16 actually take a timely, uninterrupted meal period. Moreover, any such "on duty" meal period
17 agreement did not allow for Plaintiff to revoke such an agreement even if it was signed. As
18 such, Plaintiff and others did not always receive statutory, timely meal periods during their
19 employment. To the extent that SOUTH COUNTY PACKING argues that Plaintiff and others
20 were paid to work through their meal period, this argument is not compelling due to the
21 position that there was no valid meal period waiver in place and even if there was, it is still a
22 violation to prevent an employee from taking a meal break in order to rest and recover. To the
23 extent that SOUTH COUNTY PACKING argues that employees receive meal break premium
24 pay for missed, late or short meal and rest periods, that argument is inconsequential for PAGA
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1 penalty purposes since the PAGA penalties are for the violations themselves, irrespective of
2 whether an employee received the premium payment for a missed, short, or interrupted meal
3 period. In *Kirby v. Immoos Fire Protection, Inc.*, the Court stated, “section 226.7 does not give
4 employers a lawful choice between providing *either* meal and rest breaks *or* an additional hour
5 of pay.” See *Kirby v. Immoos Fire Protection, Inc.*, (2012) 53 Cal.4th 1244, 1256 (emphasis in
6 original). Thus, the extra hour of pay does not excuse the violation; the employer has still
7 committed a violation even if the remedy for the violation has been paid. See *Wert v. U.S.*
8 *Bancorp*, (S.D. Cal. Mar. 22, 2016, 2016 WL 1110302 at *4). As such, the work environment
9 and culture at SOUTH COUNTY PACKING was not conducive to receiving consistent,
10 timely, statutory meal breaks under California law. Moreover, any meal or rest break premiums
11 paid were not compensated at the weighted average regular rate, inclusive of bonuses and/or
12 incentive payments.
13

14 15. Furthermore, during the relevant time period, and due to the above labor code
15 violations, SOUTH COUNTY PACKING failed to pay Plaintiff and other similarly situated
16 aggrieved employees all wages due to them within any time period specified by California
17 Labor Code section 204. SOUTH COUNTY PACKING was also in violation of California
18 Labor Code section 226(a) by failing to include pertinent information on the wage statements,
19 including but not limited to, the correct hourly rate, all hours worked, overtime hours worked,
20 correct overtime pay, gross wages earned, net wages earned, premium pay for missed meal and
21 rest breaks, all deductions, the correct start and end of the pay period, all employee identifying
22 information, the correct and complete name and address of the legal employer, and
23 reimbursement for business expenses, among others. As such, SOUTH COUNTY PACKING
24 did not provide Plaintiff and other similarly situated aggrieved employees with complete,
25 accurate itemized wage statements.
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1 16. During the relevant time period, SOUTH COUNTY PACKING also failed to keep
2 accurate and complete payroll records showing the actual hours worked per day and the wages
3 paid to Plaintiff and others pursuant to California Labor Code sections 1174(d).

4 17. SOUTH COUNTY PACKING also violated Labor Code § 203 because it willfully
5 failed other similarly situated aggrieved employees earned and due wages upon separation of
6 employment, either immediately upon involuntary termination, or within 72 hours of
7 resignation. These earned but unpaid wages include compensation for all hours worked,
8 including minimum wages, overtime compensation, and premium pay for missed meal and rest
9 breaks.
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11 18. During the relevant time period, Plaintiff and other aggrieved employees incurred
12 necessary, business-related expenses and costs that were not reimbursed or adequately
13 reimbursed by SOUTH COUNTY PACKING. These costs include, but are not limited to,
14 uniforms. Accordingly, SOUTH COUNTY PACKING was in violation of California Labor
15 Code sections 2800 and 2802.
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17 19. Furthermore, SOUTH COUNTY PACKING did not provide proper and
18 correct/accurate sick pay that was also delineated on employee pay stubs and also failed to
19 provide proper sick leave in violation of Labor Code sections 233 and 246. Moreover, there
20 was no suitable seating/rest break facilities for the employees pursuant to Wage Order no. 4-
21 2001/14-2001.
22

23 **FIRST CAUSE OF ACTION**

24 **PRIVATE ATTORNEYS GENERAL ACT**

25 **Representative Claim for PAGA penalties under California Labor Code sections 201,**
26 **202, 203, 204 and/or 204b, 210, 226, 226.3, 226.7, 233 246, 510, 512, 558, 1174, 1174.5,**
1194, 1194.2, 1197, 1197.1, 1198, 2800, 2802, and IWC Wage Order nos. 4/14)

27 **(Plaintiff Against all Named Defendants and all DOE Defendants)**
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1 20. Plaintiff re-alleges and incorporates by reference each and every allegation in
2 paragraphs 1 through 19, inclusive, of this Complaint as though fully set forth herein.

3 21. Pursuant to law, on March 20, 2024, Plaintiff provided the required written
4 notice to the LWDA and Defendants of the specific violations of the California Labor Code
5 that Defendants and DOE defendants have violated and continue to
6 violate.

7 22. Pursuant to California Labor code section 2699.3, no response was received from the
8 LWDA within 65 days of the postmark date of the above-alleged letter.
9

10 23. Plaintiff therefore has exhausted all administrative remedies required of him under
11 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
12 cause of action and pursue penalties in a representative action for Defendants' violations of the
13 Labor Code.

14 24. Pursuant to California Labor Code section 2699, any provisions of the Labor Code
15 that provides for a civil penalty to be assessed and collected by the LWDA or any of its
16 departments, divisions, commissions, boards, agencies, or employees for violation of the code
17 may, as an alternative, be recovered through a civil action brought by an aggrieved employee
18 on behalf of other current or former employees pursuant to the procedures specified in
19 California Labor Code section 2699.3.
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21 25. Plaintiff is an "aggrieved employee" because Plaintiff was employed by the alleged
22 violator and had one or more of the alleged violations committed against him, and therefore is
23 properly suited to represent the interests of other current and former hourly, non-exempt
24 employees who worked for SOUTH COUNTY PACKING at all locations in the state of
25 California during the relevant PAGA Period.
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27 26. Based on the acts alleged above, Plaintiff, on behalf of others, seeks penalties under
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1 California Labor Code sections 2698 and 2699 because of Defendants' violations of numerous
2 provisions of the California Labor Code as alleged in this Complaint.

3 27. Plaintiff therefore has exhausted all administrative remedies required of him under
4 California Labor Code sections 2698, 2699, and 2699.3, and, as a result, may prosecute this
5 cause of action and pursue penalties in a representative action for Defendants' violations of the
6 Labor Code.

7 28. California Labor Code section 2699 et seq. imposes penalties upon culpable
8 Defendants for violating the Labor Code.

9 29. California Labor Code section 558 establishes a civil penalty as follows: Any
10 employer or other person action on behalf of an employer who violates, or causes to be
11 violated, a section of this chapter or any provision regulating hours and days of work in any
12 order of the Industrial Welfare Commission (including the "Hours and Days of Work" section
13 of the Wage Order) shall be subject to a civil penalty of (1) for any initial violation, fifty
14 dollars (\$50) for each underpaid employee for each pay period for which the employee was
15 underpaid... (2) for each subsequent violation, one hundred dollars (\$100) for each underpaid
16 employee for each pay period for which the employee was underpaid...

17 30. Plaintiff seeks penalties for Defendants' misconduct as alleged herein as permitted by
18 law, but only those penalties that are required to be shared with the LWDA as Plaintiff is not
19 seeking individual/victim specific relief or underpaid wages for Plaintiff or other aggrieved
20 employees in this specific cause of action under the Private Attorneys General Act.

21 31. Specifically, Plaintiff seeks penalties under California Labor Code section 2699, for
22 the following:

23 Violations of California Labor Code sections 201, 202, 203, 204 and/or 204b, 210, 226,
24 226.3, 226.7, 233 246, 510, 512, 558, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1,
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1 1198, 2800, 2802, via 2698 and 2699 and any other Labor Codes and Industrial Welfare
2 Commission Wage Order Provisions (no.4/14) violated based on the facts alleged in this
3 Complaint.

4 32. Pursuant to Labor Code section 2698 et seq., Plaintiff seeks to recover attorney's fees,
5 costs, and civil penalties on behalf of other current and former aggrieved employees as alleged
6 herein in an amount to be shown according to proof at trial and within the jurisdictional limits
7 of this Court.
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10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff prays for Judgment against Defendants and each of them, as
12 follows:

- 13 1. For the imposition of civil penalties;
- 14 2. For maximum civil penalties available under Labor Code Section 2699 against
15 Defendants in a manner and amount authorized by that statute, as described more
16 particularly in the Complaint and representative PAGA claims;
- 17 3. For all costs and disbursements incurred in this suit;
- 18 4. Reasonable attorney's fees where available by law, including but not limited to, pursuant
19 to Labor Code section 2698 et seq., Code of Civil Procedure section 1021.5, and/or other
20 applicable laws; and
- 21 5. For such other and further relief as this Court may deem proper.

22 DATED: June 6, 2024

MESSRELIAN LAW INC.

23
24 By  _____
25 Harout Messrelian, Esq.
26 Attorneys for Plaintiff Gerardo Celedon Perez
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